NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2366 of 2018

Mukesh Kumar Agrawal, S/o Shri Suresh Kumar Agrawal, Aged about 32 years, R/o Ramkuj Niwas, Bhanisthan, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. Jammu and Kashmir Bank, Raipur Branch, Lal Ganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2421 of 2018

Rajesh Kumar Agrawal, S/o Shri Suresh Kumar Agrawal, Aged about 43 years, R/o Ramkuj Niwas, Bhanisthan, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. AXIS Bank Ltd., Raipur Branch, Chawla Chambers, Opp. New Bus Stand, Pandri, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2410 of 2018

1. Ghanshyam Das Poddar, S/o Late Shri Goverdhan Das Poddar, Aged about 72 years, R/o House No.4, Nagar Nigam Colony, Near Agrasen Chowk, Raipur (C.G.)
(Owner of Flat No.208)

2. Piyush Agrawal, S/o Shri Pushkar Agrawal, Aged about 26 years, R/o Opposite Bharat Mata School, Tatibandh, Raipur (C.G.)
(Owner of Flat No.301 – 3rd Floor)

---- Petitioners

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. United Commercial Bank, Main Branch, Jai Stambh Chowk, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2485 of 2018

Mahesh Kumar Agrawal, S/o Shri Suresh Kumar Agrawal, Aged about 43 years, R/o Ramkuj Niwas, Bhanisthan, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. AXIS Bank Ltd., Raipur Branch, Chawla Chambers, Opp. New Bus Stand, Pandri, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2587 of 2018

Rajesh Kumar Agrawal, S/o Shri Suresh Kumar Agrawal, Aged about 43 years, R/o Ramkuj Niwas, Bhanisthan, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. IDBI Bank Ltd., Raipur Branch, 1st Floor, Dev Tower, Beside Holy Heart School, Civil Lines, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2644 of 2018

Mahesh Kumar Agrawal, S/o Shri Suresh Kumar Agrawal, Aged about 43 years, R/o Ramkuj Niwas, Bhanisthan, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. IDBI Bank Ltd., Raipur Branch, 1st Floor, Dev Tower, Beside Holy Heart School, Civil Lines, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (C) No.2434 of 2018

1. Ashish Agrawal, S/o Kailash Agrawal, Aged about 33 years, R/o Ramsagar Para, Raipur (C.G.)
   (Owner of Flat No.504 – 5th Floor)

2. Padma Devi Agrawal, W/o Kailash Agrawal, Aged about 57 years, R/o Ramsagar Para, Raipur (C.G.)
   (Owner of Flat No.503 – 5th Floor)

---- Petitioners

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. United Commercial Bank, Main Branch, Jai Stambh Chowk, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

AND

Writ Petition (C) No.1941 of 2018

Smt. Rashmi Verma, W/o Dr. Anup Verma, Aged about 48 years, R/o Katora Talab, Raipur (C.G.)

---- Petitioner

Versus

1. District Magistrate, Raipur, District Raipur (C.G.)

2. United Commercial Bank, Main Branch, Jai Stambh Chowk, Raipur, District Raipur (C.G.)

3. M/s R.K. Constructions, Proprietor, Vikas Jain, S/o Late R.K. Jain, Shop No.311, 312, 3rd Floor, Lalganga Shopping Mall, G.E. Road, Raipur, District Raipur (C.G.)

4. J.M. Asset Reconstruction Financial Company Pvt. Ltd., 3rd Floor, B Wing, Subhashish IT Park, Plot No.68 E, Datapada Road, Opp. Tata Steel, Mumbai 66, through Authorized Officer, Vivek Mehara, Aged about 40 years, S/o Vijay Mehara.

5. M/s City Engineers and Builders, A partnership firm, through its partner Yusuf Raza, S/o Late Md. Ishaq, R/o 82 Anand Nagar, Shaheed Veernarayan Singh Ward No.32, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners in W.P.(C)Nos.1941/2018, 2410/2018 and 2434/2018: -
Mr. Kishore Bhaduri and Mr. Sunny Agrawal, Advocates.

For Petitioners in W.P.(C)Nos.2366/2018, 2421/2018, 2485/2018, 2587/2018 and 2644/2018: -
Ms. S. Harshita and Mr. Faisal Akhtar, Advocates.

For Respondent No.1 – District Magistrate, Raipur / State: -
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

For Jammu and Kashmir Bank: -
Mr. Mayank Chandrakar and Mr. Virat Verma, Advocates.

For AXIS Bank: -
Mr. B.D. Guru and Mr. Anuroop Panda, Advocates.

For United Commercial Bank (UCO Bank): -
Mr. Ravindra Sharma, Advocate.

For Respondent No.3 – M/s R.K. Constructions: -
None present.

For Respondent No.4 – J.M. Asset Reconstruction Financial Company Pvt. Ltd.: Mr. R.K. Sanghi and Mr. Manish Nigam, Advocates.

For Respondent No.5 – M/s City Engineers and Builders: -
Mr. Anand Shukla, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/09/2019

1. Since all these writ petitions involve common question of law and facts, therefore, they are being disposed of by this common order.

2. This batch of writ petitions is directed against the order passed by the learned District Magistrate, Raipur granting application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') filed by respondent No.4 – J.M. Asset Reconstruction Financial Company Pvt. Ltd., being the assignee of the Bank. By the impugned order, the learned District Magistrate has directed for handing over of the possession of the flats in question to respondent No.5 – M/s City Engineers and Builders, which is the auction purchaser in an auction held by respondent No.4.

3. Mr. Kishore Bhaduri, learned counsel for the petitioners, would submit that the petitioners have purchased flats by registered sale deeds for valuable consideration paid to respondent No.3 – M/s. R.K. Constructions, but the said respondent No.3 could not repay the outstanding dues of the Bank and as on 31-5-2012, the said loan to the Construction Company was declared NPA for an outstanding amount of ₹ 4,01,53,038/-, therefore, proceeding under Section 13 of the SARFAESI Act was initiated against respondent No.3 by the Bank and thereafter, the flats have been auctioned in favour of respondent No.5 – M/s City Engineers and Builders on 13-1-2016 which is ex facie illegal and contravenes the principles of *audi alteram partem* qua the petitioners, as they are bona fide

purchasers of the value without notice to the proceeding and have a right of ownership over the property which they have acquired after due payment of the consideration and hence, they cannot be denied of their proprietary rights which is in violation of the principles contained in Article 300-A of the Constitution of India. The learned District Magistrate failed to act in accordance with law by refusing to adjudicate the objections raised by the petitioners or by not deciding the objections raised by the petitioners and as such, the order impugned is in violation of Articles 14, 21 and 300-A of the Constitution of India qua the petitioners.

4. Mr. R.K. Sanghi, learned counsel appearing for respondent No.4 – J.M. Asset Reconstruction Financial Company Pvt. Ltd., would submit that the writ petitions as framed and filed are not maintainable, the petitioners remedy, if any, is to make an application under Section 17 of the SARFAESI Act and raise all their objections before the Debts Recovery Tribunal (DRT) which is empowered to adjudicate all the objections which have been raised by the petitioners herein before this Court in view of the judgment rendered by the Supreme Court in the matter of **Authorized Officer, State Bank of Travancore and another v. Mathew K.C.**[1], as well as in the matter of **ICICI Bank Ltd. v. Umakanta Mohapatra**[2]. He would further submit that the flats in question are still under construction and even possession has not been handed-over to the petitioners and super structure alone is standing and at present, construction is at halt and as such, the petitioners claim that they are in possession is not correct. Therefore, the petitioners

1 (2018) 3 SCC 85
2 2018 SCC OnLine SC 2349

be relegated to the remedy available under Section 17 of the SARFAESI Act.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

6. The first question would be, whether the writ petitions as framed and filed would be maintainable or the petitioners have remedy of invoking jurisdiction of the DRT under Section 17 of the SARFAESI Act?

7. The question so raised is no longer *res integra* and stands decided by the authoritative pronouncement of their Lordships of the Supreme Court in **Mathew K.C.'s** case (supra) in which their Lordships have held that normally a writ petition under Article 226 of the Constitution of India questioning SARFAESI proceeding ought not to be entertained if alternative statutory remedies are available, except in cases falling within the well-defined exceptions as observed in the matter of **CIT v. Chhabil Dass Agarwal**[3] and relying upon its earlier decision in the matter of **United Bank of India v. Satyawati Tondon**[4] and other previous pronouncements, their Lordships observed in paragraphs 16, 17 and 19 (**Mathew K.C.**) as under: -

> “16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter-affidavit having subsequently been filed, stay/modification could be sought of the interim order

3 (2014) 1 SCC 603
4 (2010) 8 SCC 110

cannot be considered sufficient justification to have declined interference.

17. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engg. Works (P) Ltd.*[5], observing: (SCC p. 463, para 32)

> "32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

19. All questions of law and fact remain open for consideration in any application by the aggrieved before the statutory forum under the SARFAESI Act."

8. The principle of law laid down in **Mathew K.C.'s** case (supra) was followed with approval subsequently by their Lordships of the Supreme Court in **Umakanta Mohapatra's** case (supra) in which their Lordships held as under: -

"3. Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in *Authorized Officer, State Bank of Travancore v. Mathew K.C.*, (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).

4. The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-

> "18. We cannot help but disapprove the approach of the High Court for reasons already noticed in *Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd.*, (1997) 6 SCC 450,

5 (1997) 6 SCC 450

observing:-

> "32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.""

9. In **Satyawati Tondon's** case (supra), their Lordships of the Supreme Court while dealing with scope of interference, maintainability and exercise of power under Article 226 of the Constitution of India have observed as under: -

> "42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.
>
> 43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain

> comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
>
> 44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.
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> 45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

10. Reverting to the facts of the present case in light of the principles of law laid down in **Mathew K.C.'s** case (supra) and **Umakanta Mohapatra's** case (supra), it is quite vivid that in this batch of writ petitions, proceeding under Section 13(4) of the SARFAESI Act has been initiated and thereafter, auction has also been conducted in which respondent No.5 stood as the action purchaser and thereafter, in an application moved by respondent No.4 at the instance of respective Banks, the learned District Magistrate has granted the application under Section 14 of the SARFAESI Act.

11. The Supreme Court in the matter of **Hindon Forge Private Limited and another v. State of Uttar Pradesh through District**

Magistrate, Ghaziabad and another[6] clearly held that application under Section 17(1) of the SARFAESI Act at the instance of a borrower before physical or actual possession of secured assets is taken by banks / financial institutions i.e. at the stage of possession notice under Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, is maintainable. It has been observed in paragraph 42 of the report as under: -

> "42. We are therefore of the view that the Full Bench judgment is erroneous and is set aside. The appeals are accordingly allowed, and it is hereby declared that the borrower/ debtor can approach the Debts Recovery Tribunal under Section 17 of the Act at the stage of the possession notice referred to in Rules 8(1) and 8(2) of the 2002 Rules. The appeals are to be sent back to the court / tribunal dealing with the facts of each case to apply this judgment and thereafter decide each case in accordance with the law laid down by this judgment."

12. In the instant case, in light of the decisions of the Supreme Court in **Mathew K.C.'s** case (supra), **Umakanta Mohapatra's** case (supra) and **Hindon Forge Private Limited** (supra), I am of the considered opinion that the petitioners have remedy of moving application under Section 17 of the SARFAESI Act before the jurisdictional DRT. Therefore, the writ petitions are disposed of granting liberty to the petitioners to avail the remedy available under Section 17 of the SARFAESI Act.

13. At this stage, Mr. Bhaduri, learned counsel appearing for the petitioners, would submit that in all the writ petitions, except W.P.(C) No.1941/2018, interim order is operating in favour of the petitioners, therefore, for a period of six weeks, the said interim order be directed to be continued enabling the petitioners to approach the Debts Recovery Tribunal (DRT) and to file appropriate application

6 (2019) 2 SCC 198

for grant of interim relief and further, the DRT be directed to dispose of that application within sixty days from the date of filing application under Section 17 of the SARFAESI Act.

14. In response to this submission, Mr. Sanghi, learned counsel appearing for respondent No.4, after seeking instructions, would submit that respondent No.4 will not disturb the petitioners for a period of four weeks as the interim order as directed by this Court is still operating.

15. Taking into consideration the submission of learned counsel for the petitioners and as agreed and stated by Mr. Sanghi, learned counsel for respondent No.4, at the Bar, interim order dated 27-8-2018 granted by this Court in this batch of petitions and continued from time to time directing that the petitioners' possession over the flats in question situated at Khushi Tower, Amlidih, Raipur, be not disturbed, shall remain in operation for a period of four weeks from today. However, it is made clear that all the observations made in this order are only for the purpose of deciding the maintainability of the writ petitions and this Court has not expressed any opinion on the merits of the matter. All the submissions of learned counsel for the petitioners and that of the respondents including the question of possession over the flats in question, are left and kept open to be considered and decided by the Debts Recovery Tribunal, if any

16. No order as to cost(s).

17. Certified copy today.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma